

COMPLIANCE BOARD OPINION 01-3

February 1, 2001

Mr. Karl Hille
The Gazette

The Open Meetings Compliance Board has considered your complaint that the Board of Education of Prince George's County violated the Open Meetings Act in connection with a retreat held on November 10 and November 11, 2000. Specifically, the complaint alleged that the Board of Education provided insufficient advance notice of a change in the status of the November 11 session, from closed to open. In addition, the complaint apparently alleged a procedural defect in the closing of the session on November 10. Finally, the complaint alleged a practice of non-compliance with certain provisions of the Act concerning minutes.

Based on the information available to us, we are unable to render an opinion whether the revised notice about the November 11 open session was timely as a matter of law. Nor can we conclude whether the closing of the November 10 session conformed to the Act's procedural requirements. We do have enough information, however, to offer an opinion on two matters raised by your complaint:

1. The Board of Education may not condition access to minutes of open meetings on receipt of a written request.

2. The Board of Education did not violate the Act merely because it did not have minutes available on November 21 for the meeting held on November 10 and 11. In addition, with respect to a matter not raised in your complaint, we point out that the original notice for the retreat in all likelihood was issued later than it should have been.

I

Timeliness of Amended Public Notice

One aspect of your complaint concerned the public notice provided for what became an open meeting of the Board of Education on November 11, 2000. The *Gazette* newspaper first received by facsimile on November 8, 2000, a notice dated

that day indicating that the Board of Education would “meet in a closed retreat” on November 10 and November 11. According to the complaint, however, a later facsimile, “dated Nov. 9 but received 2:58 p.m. Nov. 10 announced an open session from 8:00 a.m. to 1:00 p.m. Saturday [November 11]. I contend 17 hours is not reasonable notice for a newspaper to inform the public of this open meeting. The meeting was held in Linthicum, MD, more than 50 miles from their usual meeting place.”¹

In a timely response on behalf of the Board of Education,² Andrew W. Nussbaum, Board Attorney, denied that the Act had been violated. The response confirmed that the Board of Education did conduct a retreat on November 10 and November 11, 2000 and stated as follows: “A press release was issued on November 8, 2000 indicating that the Board would meet in a closed retreat over that weekend. On November 9, 2000, the Board issued a second press release indicating that there would be open and closed sessions of the retreat. The November 9 press release was issued in order to comply with the Open Meetings Act, by notifying the public that certain items of discussion during the retreat would, in fact, be open to the public.”

The Board of Education does not suggest that its November retreat was excluded from the coverage of the Open Meetings Act. Therefore, the Act’s requirements about notice of a meeting applied. Under §10-506(a) of the State Government Article, Maryland Code, “Before meeting in a closed or open session, a public body shall give reasonable advance notice of the session.” This notice must include the date, time, and place of the meeting. §10-506(b)(3). In addition, notice of a meeting must advise the public whether “a part or all of a meeting may be conducted in closed session.” §10-506(b)(3). If a public body provides notice and then some material element about the meeting – that is, its date, time, place, and closed or open status – changes, the public body is required to issue a revised notice. See Compliance Board Opinion 99-7 (June 28, 1999), *reprinted in 2 Official Opinions of the Open Meetings Compliance Board* 52.

With respect to timing, the statutory phrase “reasonable advance notice” obviously does not command that notice be provided any specific period of time in advance of a meeting. According to the Attorney General, “the rule of thumb...is that notice of a future meeting should be given as soon as is practicable after the

¹ The complaint noted that discussion at the November 11 meeting included a review of changes to the Capital Improvement Program and the Superintendent’s budget priorities for the next fiscal year. The complaint stated that “it appears the board of education intended to conceal this open meeting from the public in order to deflect criticism on items discussed and prevent public input into public business.”

² The Compliance Board granted a brief extension of time for the Board of Education’s response to the complaint.

body has fixed the date, time, and place of its next meeting.” *Open Meetings Act Manual* 18 (4th Ed., 2000). See also Compliance Board Opinion 96-11 (November 5, 1996), reprinted in 1 *Official Opinions of the Open Meetings Compliance Board* 186.

Whether the timing of the notice about the open session on November 11 violated the Act depends on an issue of fact that we cannot resolve. From the Board of Education’s response, we infer that a day after issuing a meeting notice stating that the retreat would be closed to the public, the Board of Education changed its mind about the status of its Saturday session. According to the Board of Education, “on November 9, 2000, the Board issued a second press release indicating that there would be open and closed sessions of the retreat.” The second press release was indeed dated November 9. Your complaint stated, however, that the second press release was not sent to your newspaper until the afternoon of November 10. Your complaint in this respect was confirmed by the facsimile transmission data imprinted at the top of the second press release.

If the Board of Education intentionally withheld notice of the change from closed to open status until the afternoon of November 10, the Act would have been violated. Given the short time span between the Board of Education’s decision to have an open portion of the retreat and the actual meeting date, notice of this important change should have been provided immediately after the decision. Waiting until the afternoon of the following day would have been unreasonable.

That your newspaper did not receive the notice until the afternoon of November 10, however, does not establish a violation. Perhaps other reporters received it on November 9. Moreover, timely delivery to the news media is not the only acceptable method of providing notice. §10-506(c)(4). A public body may use “any ... reasonable method” of providing notice. In this case, for example, if the revised press release had been posted in a publicly accessible place where notices of this kind are known to be available, a “reasonable method” would have been used.³ We have not been informed whether any method of notice was used other than the delayed facsimile to your newspaper. Therefore, the Compliance Board can reach no opinion about the timeliness of the second notice.

³ Public posting is ordinarily to be done “at a convenient public location at or near the place of the session.” §10-506 (c)(3). In this instance, however, the session was to be held at a hotel near BWI Airport, a considerable distance from the Board of Education’s normal meeting site. Under these circumstances, a reasonable method of informing the public about the retreat would have been by posting at an accessible location in the offices of the Board of Education.

Before leaving the matter of the timeliness of the meeting notice, however, we deem it appropriate to comment on an issue not directly presented by the complaint. According to both the complaint and the Board of Education's response, the first notice about the November 10 and 11 retreat was issued on November 8. We find it hard to credit that the notice on November 8 was issued "as soon as practicable" after the Board of Education had scheduled the retreat. Surely, a Board retreat spanning two days, one of them a Saturday, and held at some distance from members' homes, needed to be scheduled more than a few days in advance of the retreat.⁴ If, as we can only suppose, the retreat was in fact scheduled for the Board of Education members weeks before November 10, issuance of notice on November 8 was not "reasonable" in its timing. Hence, we express our concern that the Act was not complied with in this regard.

II

Procedural Requirements Concerning November 10 Meeting

Your complaint contained the following comment: "Minutes of the meeting also do not show a vote taken to meet in executive session during the Friday [November 10] meeting. Although specific policy and public business were not formally discussed, the meeting technically was an unannounced open meeting." This aspect of your complaint, especially the reference to "an unannounced open meeting," is confusing, because the Friday, November 10 meeting was closed. Indeed, the Board of Education's response indicated sufficient confusion about this aspect of your complaint that the Board declined to address it.

Assuming that, in reliance on the first sentence quoted above, your complaint is that the Board of Education failed to conduct in open session a recorded vote to close the session on November 10, the Compliance Board has no information on which to reach an opinion.

⁴ The Board of Education did not address the question of when the dates for the retreat were fixed. Accordingly, we must rely on our understanding of the normal practices of a public body in such situations. A two-day retreat requires a substantial amount of planning, and board members with many professional and personal commitments ordinarily block out time for the retreat several weeks or even months ahead of time.

III

Availability of Minutes

Finally, your complaint alleged that the Board of Education “did not comply with the Open Meetings Act by making information about past meetings readily available to the public as required by §10-509(b)” of the State Government Article. The basis for this aspect of your complaint is stated as follows:

The board secretary’s office told The Gazette on Nov. 21 that the executive secretary would be out for a week and no one else could provide copies of the agenda or minutes from this retreat. The board is required to provide minutes to the public as soon as practicable after it meets. The law directs the board to perform the function, not the executive secretary.

The school system has also continued to fail to make lists of topics discussed in closed session readily available to the public as required by §10-509(c)(2). On Nov. 16, The Gazette requested a list of all topics discussed in executive session during Oct. 12 and Oct. 26 board of education meetings. No such information has been forthcoming as of the writing of this letter.

The Board of Education’s response indicated that its office manager was not out for a week, as alleged in the complaint, but that the school system’s administrative offices were closed for the Thanksgiving holiday on November 22, 23, and 24. The response continued: “As to the allegation related to Mr. Hille’s November 16, 2000 request, [the office manager] recalls that as the members of the Board of Education were taking their seats to begin their meeting on that evening, Mr. Hille verbally requested from her a list of topics discussed at previous meetings. She was obviously unprepared to respond to that request at that time. Upon receipt of a request for information in writing, from Mr. Hille, [the office manager] will provide whatever appropriate information is sought.”

The standard in the Act is that minutes be prepared “as soon as practicable after a public body meets.” §10-509(b). This standard, we have held, “permits a public body to take a reasonable amount of time to review draft minutes for accuracy and to approve the minutes.... The Act allows practical circumstances to be considered and does not impose a rigid time limit.” Compliance Board Opinion 99-18 (November 4, 1999), *reprinted in 2 Official Opinions of the Open Meetings Compliance Board* 87. Minutes must be prepared within a reasonable time, and routine delays of several months would be unlawful, but minutes need not always

be prepared by the time of the next meeting. *Id.* See also Compliance Board Opinion 99-19 (November 18, 1999), *reprinted in 2 Official Opinions of the Open Meetings Compliance Board* 92.

We do not find it unreasonable that minutes for a meeting held on November 10-11 were not available to the public a mere ten days later, on November 21. Therefore, we find that the Act was not violated in this regard.

Your complaint also alluded more generally to an alleged continuing failure by the Board of Education “to make lists of topics discussed in closed session readily available to the public as required by §10-509(c)(2).” This provision mandates that, after a public body closes a meeting, the minutes for its next open meeting are to include, among other things, “a listing of the topics of discussion” at the prior closed meeting.⁵ Your complaint cited a request on November 16 for topics discussed in closed sessions on October 12 and October 26. The response of the Board of Education was that the office manager, who would be responsible for providing the information, had been approached at the very start of a meeting and “was obviously unprepared to respond to the request at that time. Upon receipt of a request for information *in writing*, ... [the office manager] will provide whatever appropriate information is sought” (emphasis added).

If the implication of this statement is that open session minutes do contain the pertinent information about the closed sessions on October 12 and October 26 and are readily available under circumstances other than at the very start of a Board of Education meeting, then the Open Meetings Act will have been complied with. The Compliance Board notes, however, that the Board of Education may not require you or any other member of the public to submit a request for open session minutes in writing. In §10-509 (d), the Act provides that “minutes of a public body are public

⁵ The full text of the requirement is as follows:

If a public body meets in closed session, the minutes for its next open session shall include:

- (i) a statement of the time, place, and purpose of the closed session;
- (ii) a record of the vote of each member as to closing the session;
- (iii) a citation of the authority under the subtitle for closing the session; and
- (iv) a listing of the topics of discussion, persons present, and each action taken during the session.

records and shall be open to public inspection during ordinary business hours.” This provision means that open session minutes are available upon request without need of a formal written application.

OPEN MEETINGS COMPLIANCE BOARD*

Courtney McKeldin

Tyler G. Webb

*Chairman Walter Sondheim Jr., did not participate in the preparation or approval of this opinion.